

**REMARKS/ARGUMENTS**

It is believed that this Amendment, in conjunction with the following remarks, place the application in immediate condition for allowance or at least presents the claims in better form for consideration on Appeal. Accordingly, entry of this Amendment and favorable consideration of the application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-66 are pending in the application.

**Allowable Subject Matter**

Applicant notes with appreciation the indication on page 13 of the Office Action that claims 14-17, 31-34, 42-44, 50-56 and 59-65 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants submit this is not necessary in view of the following remarks.

**35 U.S.C. § 112 Rejections**

Claims 48-56 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner asserted that the recited feature “computer readable medium” is not disclosed in the specification and is therefore considered new matter.” Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded of the provisions set forth in MPEP 2163.02, which states:

The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

Moreover, the MPEP sets forth the standard for satisfying the written description requirement as follows (MPEP 2163.02; emphasis added).

An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed.

Applicant submits that the originally-filed application describes the subject matter at issue with reasonable clarity, so that one skilled in the art would appreciate that applicant was in possession of the claimed subject matter. For example, at paragraph [0048], the written description discloses a processor which may be programmed based upon various factors. One of ordinary skill in the art would appreciate that programming instructions for a processor may be stored in and read from a "computer readable medium."

Additionally, originally filed claim 18 recites "a memory coupled to the processor...." One of ordinary skill in the art would appreciate that a "memory" is a "computer readable medium." Applicant points out that the subject matter presented in an originally filed claim may be relied upon as support for the newly added claims. As set forth in MPEP 2163(I): "[i]t is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification."

Accordingly, because the specification fully supports a "computer readable medium" under the provisions set forth in MPEP 2163, Applicant respectfully requests that the Examiner withdraw the §112, first paragraph, rejection of claims 48-56.

**35 U.S.C. §103 Rejections**

Claims 1, 3, 5-6, 10-11, 18, 20, 22-23, 27-28, 35-37, 38-40, 48 and 57 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey et al. (U.S. Patent Pub. No. 2004/0157551). Claims 4 and 21 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey in view of Peterson (US 6574198). Claim 45 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey in view of Weaver (US 6108364). Claims 7-9, 24-26, 41 and 46 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey in view of Lusky et al. (U.S. Patent No. 7,315,573). Claim 47 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey in view of Lusky, and further in view of Irving (US 6163276). Claims 13, 30 49 and 58 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gainey in view of Leslie et al. (U.S. Patent No. 6,404,755). Claim 47 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over in view of Gainey in view of Lusky et al., and in further view of Irving (U.S. Patent No. 6,163,276). Applicants respectfully traverse each of these rejections for at least the following reasons.

**U.S. Provisional Patent Application 60/390,094 is not Prior Art**

After further reviewing the applied reference (U.S. Patent Pub. No. 2004/0157551 by Gainey et al.) and its related priority case, Applicants note that Provisional Application 60/390,094 filed June 21, 2002 has James A. Proctor and Kenneth M. Gainey listed as the inventors. The present application has the same inventorship as Provisional Application 60/390,094. Additionally, the present application claims priority from Provisional Application 60/426,541, filed November 15, 2002, which predates the filing date of June 20, 2003 of U.S. Patent Pub. No. 2004/0157551, which claimed priority to Provisional Application 60/426,541.

Accordingly, since the inventorship of Provisional Application 60/390,094 is the same as the present application, it cannot be relied upon as prior art under 35 U.S.C. §102(e), which requires that the patent application be “by another filed in the United States”. Accordingly, Applicants respectfully submit the foregoing rejections which rely on Provisional Application 60/390,094 and the subject matter contained therein are improper and respectfully requests withdrawal of each of these rejections.

New Claim 66

Applicants respectfully submit that in addition to being allowable based on its dependency from claim 1, new dependent claim 66 recites additional subject matter not taught or suggested by the applied references. Regarding claim 66, Applicant submits that applied references fail to disclose, at least, establishing a first threshold associated with a first of the at least two frequency channels and a second threshold associated with a second of the at least two frequency channels, “wherein each threshold is established based upon a probability of a false detection of the signal” as recited in claim 66 (emphasis added).

Accordingly, Applicants respectfully submit the claim 66 is allowable for at least these additional reasons.

**SUMMARY**

Since the Examiner has maintained his rejection of claims under 35 U.S.C. § 103 as noted above, Applicant once again traverses these rejections. Applicant expressly maintains the reasons from the prior responses to clearly indicate on the record that Applicant has not conceded any of the previous positions relative to the maintained rejections. For brevity, Applicant expressly incorporates the prior arguments presented in the July 28, 2008 response without a literal rendition of those arguments in this response.

For at least the foregoing reasons and the reasons set forth in Applicant's response of July 28, 2008, it is respectfully submitted that claims 1, 18, 48 and 57 are distinguishable over the applied art. The remaining claims depending therefrom are allowable at least by virtue of their dependency on the above-identified independent claims. See MPEP § 2143.01. Moreover, these claims recite additional subject matter, which is not suggested by the documents taken either alone or in combination.

### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

#### Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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